

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T. R No. 124 of 2001
(Old No. 948 of 1991)

Kisan Sahkari Chini Mills Ltd.
Nadehi, Nainital. Applicant/Revisionist

Vs.

The Commissioner of Sales Tax,
U.P. Opposite Party

Shri Sayeed Nadeem, Learned Standing Counsel for the applicant.
None present on behalf of the opposite party.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel. None appeared for respondent even after service.

2. This revision was filed way back in the year 1991, before Allahabad High Court and is received by transfer from Allahabad High Court, under Section 35 of U.P. Reorganisation Act, 2000.

3. The revision has been moved under Section 11 (1) of U.P. Sales Tax Act, 1948, and is directed against the judgment and order dated 25.05.1991, passed by Sales Tax Tribunal, Haldwani.

4. The only question of law, raised in the revision is whether the cost of gunny bags was liable to be taxed by adding the same in the turnover of the dealer, with the price of the sugar?

5. The assessee is manufacturer of sugar who also sells it. The assessment pertains to the year 1982-83, for which year, the tax on sugar was exempted under Section 4 of U.P. Sales tax Act, 1948. The sugar is always sold in gunny bags as it is packed in gunny bags before it is stored for sale. The assessee who is the manufacturer of sugar is not supposed to sell it in loose without any packing.

6. Merely on the basis of the fact that the sugar was sold in gunny bags by the manufacturer, it cannot be said that the assessee has sold the gunny bags. There is nothing on the record to establish that there was any direct agreement between the assessee and the purchaser of sugar for sale of gunny bags for the specific amount as consideration. Since no price was paid for the gunny bags, there cannot be said to be sale of gunny bags, as it does not come within the definition of sale, in view of Section 2 (h) of the U.P. Sales Tax Act, 1948.

7. In view of the above discussions, the question is answered accordingly and revision is allowed.

(Prafulla C. Pant, J.)

Dt: 28.07.2005

Sweta